

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
STATEMENT OF REGULATORY PRIORITIES
FOR FISCAL YEAR 2022

Introduction

The Regulatory Plan for the Department of Housing and Urban Development (HUD) for Fiscal Year (FY) 2022 highlights the most significant regulations and policy initiatives that HUD seeks to complete during the upcoming fiscal year. As the Federal agency that serves as the nation's housing agency, HUD is committed to addressing the housing needs of all Americans by creating strong, sustainable, inclusive communities, and quality affordable homes for all. As a result, HUD plays a significant role in the lives of families and in communities throughout America.

HUD is currently working to strengthen the housing market to bolster the economy and protect consumers; meet the need for quality affordable rental homes; utilize housing as a platform for improving quality of life; build inclusive and sustainable communities free from discrimination and transform the way HUD does business. Under the leadership of Secretary Marcia L. Fudge, HUD is dedicated to implementing the Administration's priorities by setting forth initiatives related to recovery from the COVID-19 pandemic, providing economic relief to those HUD serves, advancing racial equity and civil rights, and tackling the climate emergency.

Since the beginning of the Administration, HUD has taken a number of actions to advance equity in its programs and secure equal access to housing opportunity for all. For example, on February 11, 2021, HUD issued a memorandum directing its Office of Fair Housing and Equal Opportunity and organizations that enter into agreements with the Department to carry out fair housing laws and activities to fully enforce the Fair Housing Act to prohibit discrimination based on sexual orientation and gender identity; on April 26, 2021, HUD issued a plan of action the Department will take to strengthen Nation-to-Nation relations and improve HUD-wide Tribal consultation; on June 10, 2021, HUD published an interim final rule to restore certain definitions and certifications to its regulations implementing the Fair Housing Act's requirement to affirmatively further fair housing (AFFH) (86 FR 30779); and on June 25, 2021, HUD published a proposed rule to reinstate HUD's discriminatory effects standard (86 FR 33590).

The rules highlighted in HUD's regulatory plan for FY 2022 reflect HUD's efforts to continue its work in meeting the needs of underserved communities and providing for equal access to housing opportunities. In addition, it reflects HUD's efforts to strengthen the housing market and protect consumers, and to aid in recovery from the COVID-19 pandemic. Additionally, HUD notes that the FY 2022 Semiannual Regulatory Agenda includes additional rules that advance the Administration's priorities, including, rules to advance equity by ensuring non-discrimination based on disability in HUD programs, and a rule to help address the climate emergency by improving the resilience of HUD-assisted or financed projects to the effect of climate change.

Affirmatively Furthering Fair Housing

Executive Order 13985, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," (86 FR 7009, January 20, 2021) requires each agency to consider whether new policies, regulations, or guidance documents may be necessary to advance equity in agency actions and programs. Further, on January 26, 2021 (86 FR 7487), President Biden issued a "Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies," which explained that the Federal Government will work with communities to, among other things, end housing discrimination, lift barriers that restrict housing and neighborhood choice, promote diverse and inclusive communities, and to secure equal access to housing opportunity for all.

As noted above, on June 10, 2021, HUD published an interim final rule to restore certain definitions and certifications to its regulations implementing the Fair Housing Act's requirement. HUD will build on that rule and issue an AFFH proposed rule that seeks to ensure that HUD and its grantees are sufficiently effective in fulfilling the purposes and policies of the Fair Housing Act. HUD's proposed rule will provide HUD and its program participants with a more effective Fair Housing Planning Process as a means to meet their duty to affirmatively further the Fair Housing Act. Currently, HUD funding recipients must certify compliance with their duty to AFFH on an annual basis and HUD itself has a continuous statutory obligation to ensure that the Fair Housing Act's AFFH obligations are followed.

For decades, courts have held that the AFFH obligation imposes a duty on HUD and its grantees to affirmatively further the purposes of the Fair Housing Act. These courts have held that for funding

recipients to meet their AFFH obligations they must, at a minimum, make decisions informed by preexisting racial and socioeconomic residential segregation. The courts have further held that, informed by such information, funding recipients must strive to dismantle historic patterns of racial segregation; preserve integrated housing that already exists; and otherwise take meaningful steps to further the Fair Housing Act's purposes beyond merely refraining from taking discriminatory actions and banning others from such discrimination. Through this proposed rule, HUD plans to implement the AFFH mandate and work towards a more equitable future for all by developing a Fair Housing Planning Process that reduces burdens for program participants and achieves material, positive change that affirmatively furthers fair housing. Specifically, HUD is focused on advancing equity and providing access to opportunity for underserved populations in a manner that is more effective in achieving measurable improvements while avoiding unnecessary burden.

Aggregate Costs and Benefits

Executive Order 12866, as amended, requires the agency to provide its best estimate of the combined aggregate costs and benefits of all regulations included in the agency's Regulatory Plan that will be pursued in FY 2022. HUD expects that neither the total economic costs nor the total efficiency gains will exceed \$100 million. HUD grantees are already familiar with the AFFH compliance process as instituted by the 2015 rule and the 2021 interim final rule. Having learned from prior rulemakings, HUD believes that the rule will create the right balance of analysis so that grantees will have the available data necessary to help them in completing any analytical requirements without adding the same level of costs associated with the 2015 rulemaking.

Statement of Need

The rule is needed to conform HUD regulations with statutory standards and judicial interpretations of those standards, and to ensure consistency in fair housing certifications across HUD programs. This proposed rule would consider HUD's AFFH rule published on July 16, 2015 (80 FR 42272) (2015 AFFH rule) but improve upon its framework and impose less regulatory burden.

Alternatives:

Alternatives to promulgating this rule involve finalizing the interim rule, “Restoring Affirmatively Furthering Fair Housing Definitions and Certifications,” without taking further action or repromulgating the 2015 AFFH rule without considering changes that could reduce regulatory burden and enable a more meaningful fair housing planning process. If HUD were to finalize the interim rule without taking further action, there would be inconsistency in fair housing certifications across different jurisdictions, as the interim rule does not require that jurisdictions submit fair housing plans in any particular form, such as an Analysis of Impediments, or an Assessment of Fair Housing, as was previously required. If HUD were to repromulgate the 2015 AFFH rule without considering changes, HUD would miss an opportunity to improve upon that rule and reduce the significant regulatory burdens resulting from that rule. HUD believes neither of those options are better than providing for a new certification process that will undergo new public comment.

Risks:

Previous iterations of the AFFH rule have resulted in an amount of burden on grantees that made implementation challenging. HUD must balance the use of data and the depth of analysis that is required of differing sized grantees to ensure that grantees can implement the affirmatively furthering fair housing mandate while continuing to fulfill their programmatic requirements. In promulgating this rule, HUD will attempt to secure support from as many stakeholders as possible to ensure maximum compliance with the duty to AFFH.

TIMETABLE:

Action	Date	FR Cite
Proposed Rule	12/00/2021	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Governmental jurisdictions

Government Levels Affected:

Yes

Federalism Affected:

No

Energy Affected:

No

International Impacts:

No

Increased Forty-Year Term for Loan Modifications

Executive Order 14002, “Economic Relief Related to the COVID-19 Pandemic” (Jan. 22, 2021), directs federal agencies to “promptly identify actions they can take within existing authorities to address the current economic crisis resulting from the [COVID 19] pandemic.” In response to this Executive Order and in support of the goal of achieving broad economic recovery following the COVID-19 pandemic, HUD has established expanded COVID-19 Loss Mitigation Options to address the impacts many Americans are experiencing in recovering financially from the long-lasting effects of the pandemic. HUD continues to evaluate both the effects of the pandemic on its portfolio as well as the economic indicators of the broader recovery.

This proposed rule would amend HUD’s current regulation to allow for mortgagees to recast the total unpaid loan and other eligible costs for a new term not exceeding 480 months. HUD anticipates that this would allow mortgagees greater ability to assist defaulted borrowers, including borrowers affected by the COVID-19 pandemic, with avoiding foreclosure.

HUD’s current regulations allow mortgagees to modify a Federal Housing Administration (FHA) insured mortgage by recasting the total unpaid loan and other eligible costs for a term limited to 360 months to cure a borrower’s default. Mortgagees are required to consider utilizing deeds in lieu of foreclosure, pre-foreclosure sales, partial claims, assumptions, special forbearance, and recasting of mortgages.¹ One of these options allows mortgagees to modify a mortgage for the purpose of changing the amortization provisions and recasting the total unpaid loan and other eligible costs for a term not exceeding 360 months from the date of the modification.²

Allowing mortgagees to provide a 40-year loan modification would support HUD’s mission of fostering homeownership by assisting more borrowers with retaining their homes after a default episode while mitigating losses to FHA’s Mutual Mortgage Insurance (MMI) Fund. For many borrowers who have become delinquent, a lowered monthly payment is key to their ability to bring the mortgage current, prevent re-default, and ultimately retain their home and build wealth through homeownership. The difference between the monthly payment provided under a 40-year loan modification and a 30-year loan modification may be significant for a borrower and their ability to afford the modified payment.

¹ 24 CFR 203.501.

² 24 CFR 203.616

Aggregate Costs and Benefits

Executive Order 12866, as amended, requires the agency to provide its best estimate of the combined aggregate costs and benefits of all regulations included in the agency's Regulatory Plan that will be pursued in FY 2021. HUD expects that neither the total economic costs nor the total efficiency gains will exceed \$100 million. This proposed rule would increase available loss mitigation options for borrowers and enable more borrowers to avoid foreclosure and remain in their homes. HUD also anticipates that this would have a positive effect on the FHA Mutual Mortgage Insurance Fund by lowering defaults.

Statement of Need

Borrowers impacted by the COVID-19 pandemic, including those who may re-default in the future after having received a loss mitigation option under HUD's COVID-19 policies, may need a 40-year loan modification to provide a monthly payment that they can afford. It is vital that these borrowers receive any loss mitigation options at HUD's disposal and for which they are eligible to avoid foreclosure whenever possible and to mitigate the impact of the COVID-19 pandemic.

Additionally, given the large number of FHA-insured mortgages that have been originated or refinanced in the past few years in a historically low interest rate environment, simply extending out the term of a mortgage in default for another 30 years at a similar interest rate would not provide a substantial reduction to a borrower's monthly mortgage payment. Therefore, providing this option for relief for all borrowers and originators is prudent for all FHA-insured mortgages.

Alternatives

HUD has considered other loss mitigation options which would allow borrowers to avoid foreclosure in response to the COVID-19 pandemic. HUD has made many of these options available through mortgagee letter. HUD does not view these options as alternatives, as different circumstances may call for different forms of loss mitigation. Additionally, HUD finds that this new option should not be limited only in response to the COVID-19 pandemic, but should be available in all circumstances where it could help individuals keep their homes.

Risks

Although the impact of introducing a 40-year loan modification option for borrowers on the MMI Fund will need to be modeled, HUD anticipates a favorable impact through reduced utilization of other, more costly loss mitigation options and foreclosure prevention.

Additionally, HUD anticipates that the effect on FHA-insured mortgagors will be minor. HUD recognizes that a 40-year mortgage would cost the borrower in the form of greater interest paid over time and slower equity building. However, HUD notes that the average life of an FHA-insured mortgage is approximately seven years, and HUD anticipates that a borrower would similarly refinance a 40-year mortgage. Any additional interest and slowed equity build that a borrower might pay with a 40-year modified loan compared to a 30-year modified loan, especially when looked at over the life of an average FHA-insured mortgage, would not impose a significant burden to borrowers and would be outweighed by the benefits to a borrower of being able to retain their home.

TIMETABLE:

Action	Date	FR Cite
Proposed rule	12/00/21	

Regulatory Flexibility Analysis Required:	No
Small Entities Affected:	No
Government Levels Affected:	None
Federalism Affected:	No
Energy Affected:	No
International Impacts:	No